



**HON. SYLVIA O. HINDS-RADIX**  
*Corporation Counsel*

**THE CITY OF NEW YORK**  
**LAW DEPARTMENT**  
100 CHURCH STREET  
NEW YORK, N.Y. 10007

**MICHAEL PESIN-VIROVETS**  
*Senior Counsel*  
Office: (212) 356-2617  
Mobile: (646) 596-0583  
Email: mpvirove@law.nyc.gov

May 19, 2023

**BY ECF**

Honorable Vera M. Scanlon  
United States District Court  
Eastern District of New York  
225 Cadman Plaza East  
Brooklyn, NY 11201

Re: Payamps v. City of New York, et al.  
22-CV-00563 (AMD) (VMS)

Your Honor:

I am a Senior Counsel in the Office of the Hon. Sylvia O. Hinds-Radix, Corporation Counsel of the City of New York, and the attorney representing defendants the City of New York ("City"), Mayor Bill de Blasio, Commissioner Dermot Shea, NYPD Chief of Department Terence Monahan, Police Officer Daniel Auguste, Police Officer Corey Johnson, and Inspector Jesse Lance (collectively "defendants") in the above-referenced matter. Defendants write to provide the Court with an update as to progress we have been able to make pursuant to the Court's Order dated April 11, 2023, to request for additional time to finalize defendants' discovery production in light of Your Honor's endorsement of the joint case management plan, which extends fact discovery to July 30, 2023, and for Your Honor to schedule a settlement conference at a time convenient for the Court and plaintiff's counsel.

With respect to defendants' request for additional time to finalize production of discovery, plaintiff's counsel, Jessica Massimi, asked to note her position as follows: "Plaintiff continues to oppose Defendants' repeated extension requests for the reasons set forth in ECF Nos. 39, 48, and 50."

As a preliminary matter, I sincerely apologize to the Court for the repeated extension requests. As I expressed in an earlier letter to the Court filed just yesterday, I was recently on trial in the matter of George Benn v. Delory Morrison et al. (18 Civ. 722) before Judge Rochan in the

Southern District of New York. The trial ran from May 5, 2023 until May 10, 2023. While the trial only lasted five days, the amount of time I dedicated to preparing witnesses and general trial preparation in the preceding weeks severely limited my ability to resolve the outstanding discovery disputes in this case. Moreover, in retrospect, I severely misjudged what discovery our office will be able to provide in this case. At this point, while I continue to interview John Doe defendants in an effort to comply with the Court's Order, I have serious concerns about my ability to comply with certain aspects of the March 30, 2023 joint status letter, and, as such, will be reaching out to plaintiff's counsel to arrange for a time to meet and confer in order to revisit our previously agreed upon positions.

Nevertheless, what follows is a status update as to outstanding discovery matters:

#### Identification of John Does

Pursuant to the Court's April 11, 2023 Order, defendants were to continue to attempt identify John Does allegedly involved in the incident which forms the basis for plaintiff's lawsuit. As discussed in the April 11, 2023 conference, the CCRB investigation identified 6 subject officers and an additional 17 witness officers (23 total officers) who were allegedly present for plaintiff's arrest on June 4, 2023. Earlier today, defendants provided plaintiff with photographs and still images taken from the video capturing plaintiff's arrest that identified nine additional officers that are depicted in the same. Moreover, pursuant to the Court's Order, defendants have already met and interviewed a total of twenty officers that were referenced in the CCRB case file. Defendants have been making diligent efforts to interview all the witnesses identified by the CCRB. Defendants have yet to interview the four final witnesses identified by the CCRB and are endeavoring to do so next week. Defendants will supplement today's production should they obtain new information following the remaining interviews. However, it should be noted that defendants have been able to specifically identify to plaintiff nine officers who are depicted in the photographs that are part of the CCRB file.

#### CCRB and IAB files related to the June 4, 2020 protest

Defendants were ordered to provide Plaintiff "with information as to the number CCRB and IAB files relating to the same date and location and any relevant information regarding any difficulties in obtaining such files." As defendants indicated to the Court in our letter dated May 1, 2023, there are 17 CCRB investigation files, which comprises approximately 9,000 pages of documents; these 17 files encompass investigations into protest related arrests made on June 4, 2020. Defendants have also been made aware, as stated in our previous letter, that there are 13 responsive internal investigation files that relate to the instant protest. The undersigned is not yet in receipt of same.

#### Other materials referenced in the letter at ECF No. 43

Defendants respectfully refer the Court to the joint status letter dated March 30, 2023 for a summary of the other outstanding discovery requests. (ECF No. 43). Pursuant to the joint status letter, defendants are to identify (1) names of incident commanders who were at the protest or who participated in the chain of command related to the protest; names of legal bureau personnel who

were present at the protest; and the names of legal bureau personnel who defendants consulted with in connection to the protest; (2) each person who decided to give plaintiff a DAT/summons and each person who contributed to plaintiff's arrest paperwork; (3) produce the audit trails and metadata for the BWC of all NYPD members who were present at the protest; and (4) each individual's defendants NYPD personnel profile report and CPI report.

With respect to names of incident commanders and legal bureau personnel, the undersigned has made inquiries as to whether this information has been provided but has not yet received an answer. Additional time is needed to cross-reference what discovery has been produced in the consolidated cases on this subject to verify what is still owed to the plaintiff.

With respect to identifying each person who gave plaintiff a DAT/summons and each person who contributed to plaintiff's arrest paperwork, defendants state that they have submitted requests with the office's Civil Litigation Unit and will supplement their production in accordance with the Court's revised discovery schedule.

With respect to production of audit trails and metadata for the BWC of all NYPD members who were present at the protest, as mentioned to Your Honor earlier in this letter, the undersigned will be reaching out to plaintiff's counsel to meet and confer regarding production of this discovery.

With respect to production of the individual's defendants' current personnel profile report and CPI report, as the City indicated in its letter dated May 1, 2023, the only outstanding documents pertain to defendant Jesse Lance. The undersigned received defendant Lance's CPI report today, May 19, 2023, and will produce it to plaintiff as soon as possible. With respect to defendant Lance's personnel report, defendants state that they have requested the relevant documents and will provide it to counsel in accordance with the current case management plan.

Accordingly, Defendants respectfully request for additional time to finalize defendants' discovery production in accordance with the current case management plan and for Your Honor to schedule a settlement conference at a time convenient for the Court and plaintiff's counsel.

I sincerely thank the Court for its consideration of these requests.

By: /s/ Michael Pesin-Virovets  
Michael Pesin-Virovets  
Senior Counsel

cc: **By ECF**

Elena Louisa Cohen  
Cohen Green PLLC  
*Attorney for Plaintiff*

Remy Green  
Cohen & Green  
*Attorney for Plaintiff*

Jessica S. Massimi  
99 Wall Street, Ste. 1264  
New York, NY 10005  
*Attorney for Plaintiff*

Gideon Orion Oliver  
Attorney at Law  
277 Broadway  
Suite 1501  
New York, NY 10007  
*Attorney for Plaintiff*